

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SALVADOR SERRATO,  
Plaintiff,

v.

KATHLEEN ALLISON, et al.,  
Defendants.

Case No. [23-cv-03203-JSC](#)

**ORDER OF SERVICE**

**INTRODUCTION**

Plaintiff, a California prisoner proceeding without an attorney, filed this civil rights action under 42 U.S.C. § 1983. Plaintiff has been granted leave to proceed in forma pauperis in a separate order. For the reasons discussed below, the complaint is ordered served upon Defendants.

**STANDARD OF REVIEW**

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pleadings filed by parties unrepresented by a lawyer must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the

elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim for relief that is plausible on its face.” *Id.* at 570.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

### LEGAL CLAIMS

When liberally construed, Plaintiff’s allegations that Defendants’ policies of integrating inmates from different security threat groups led to his assault by other inmates and being pepper-sprayed state a cognizable claim for relief against Defendants for being deliberately indifferent to his safety, in violation of his Eighth Amendment rights.

### CONCLUSION

For the foregoing reasons,

1. Defendant Secretary Kathleen Allison shall be served at the California Department of Corrections and Rehabilitation. Defendant Warden Craig Koenig shall be served at the California Training Facility.

Service shall proceed under the California Department of Corrections and Rehabilitation’s (CDCR) e-service program for civil rights cases from prisoners in CDCR custody. In accordance with the program, the Clerk is directed to serve on CDCR via email the following documents: the complaint, this order, a CDCR Report of E-Service Waiver form, and a summons. The Clerk also shall serve a copy of this order on the Plaintiff.

No later than 40 days after service of this order via email on CDCR, CDCR shall provide the Court a completed CDCR Report of E-Service Waiver advising the Court which Defendant(s) listed in this order will be waiving service of process without the need for service by the United States Marshal Service (USMS) and which Defendant(s) decline to waive service or could not be reached. CDCR also shall provide a copy of the CDCR Report of E-Service Waiver to the

California Attorney General's Office which, within 21 days, shall file with the Court a waiver of service of process for the Defendant(s) who are waiving service.

Upon receipt of the CDCR Report of E-Service Waiver, the Clerk shall prepare for each Defendant who has not waived service according to the CDCR Report of E-Service Waiver a USM-205 Form. The Clerk shall provide to the USMS the completed USM-205 forms and copies of this order, the summons, and the complaint for service upon each Defendant who has not waived service. The Clerk also shall provide to the USMS a copy of the CDCR Report of E-Service Waiver.

2. To expedite the resolution of this case:

a. No later than **91** days from the date this order is issued, Defendants shall file a motion for summary judgment or other dispositive motion. The motion shall be supported by adequate factual documentation and shall conform in all respects to Federal Rule of Civil Procedure 56 and shall include as exhibits all records and incident reports stemming from the events at issue. If Defendants are of the opinion that this case cannot be resolved by summary judgment, they shall so inform the Court prior to the date the summary judgment motion is due. All papers filed with the Court shall be promptly served on Plaintiff.

b. At the time the dispositive motion is served, Defendants shall also serve, on a separate paper, the appropriate notice required by *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc). See *Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012).

c. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the Court and served upon Defendants no later than **28 days** from the date the motion is filed. Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc).

d. Defendants shall file a reply brief no later than **14** days after the opposition is filed.

e. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the Court so orders at a later date.

3. All communications by the plaintiff with the court must be served on defendants, or

1 defendants' counsel once counsel has been designated, by mailing a true copy of the document to  
2 defendants or their counsel.

3 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No  
4 further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required  
5 before the parties may conduct discovery.

6 Plaintiff is reminded that state prisoners inmates may review all non-confidential material  
7 in their medical and central files, pursuant to *In re Olson*, 37 Cal. App. 3d 783 (Cal. Ct. App.  
8 1974); 15 California Code of Regulations § 3370; and the CDCR's Department Operations  
9 Manual §§ 13030.4, 13030.16, 13030.16.1-13030.16.3, 13030.21, and 71010.11.1. Requests to  
10 review these files or for copies of materials in them must be made directly to prison officials, not  
11 to the court.

12 6. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court  
13 informed of any change of address and must comply with the court's orders in a timely fashion.  
14 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to  
15 Federal Rule of Civil Procedure 41(b).

16 **IT IS SO ORDERED.**

17 Dated: October 25, 2023

18  
19   
20 JACQUELINE SCOTT CORLEY  
21 United States District Judge  
22  
23  
24  
25  
26  
27  
28